

UNIT 81 CLAIMS

(Formerly Unit 78)

UNIT CERTIFICATION

Statement of Completion

_____ has satisfactorily completed on-the-job training in the duty or duties of this Unit under the conditions described below and in accordance with the overall standard(s) for this Unit.

Duty	Analyze and recommend settlement positions and prepare a Contracting Officer's decision.
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Conditions	Given a contract and a claim from a contractor.
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Overall Standard(s)	Correctly determine the validity of the claim and prepare a proper and complete decision. Protect the Government's interests while treating the contractor fairly and equitably within the terms of the contract.
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Evaluator

Name

Title

Date

UNIT 81 CLAIMS

DOCUMENTATION OF OJT ASSIGNMENT(S)
Description of Assignment:
Evaluation:
Completion Date:

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Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
8.405-7		Disputes under a Federal Supply Schedule.
22.1026		Disputes regarding labor standards requirements of the contract.
33.2		Disputes and appeals.
43.104		Notification of contract changes.
52.233-1		Disputes.
52.243-7		Notification of changes.

Other KSA's

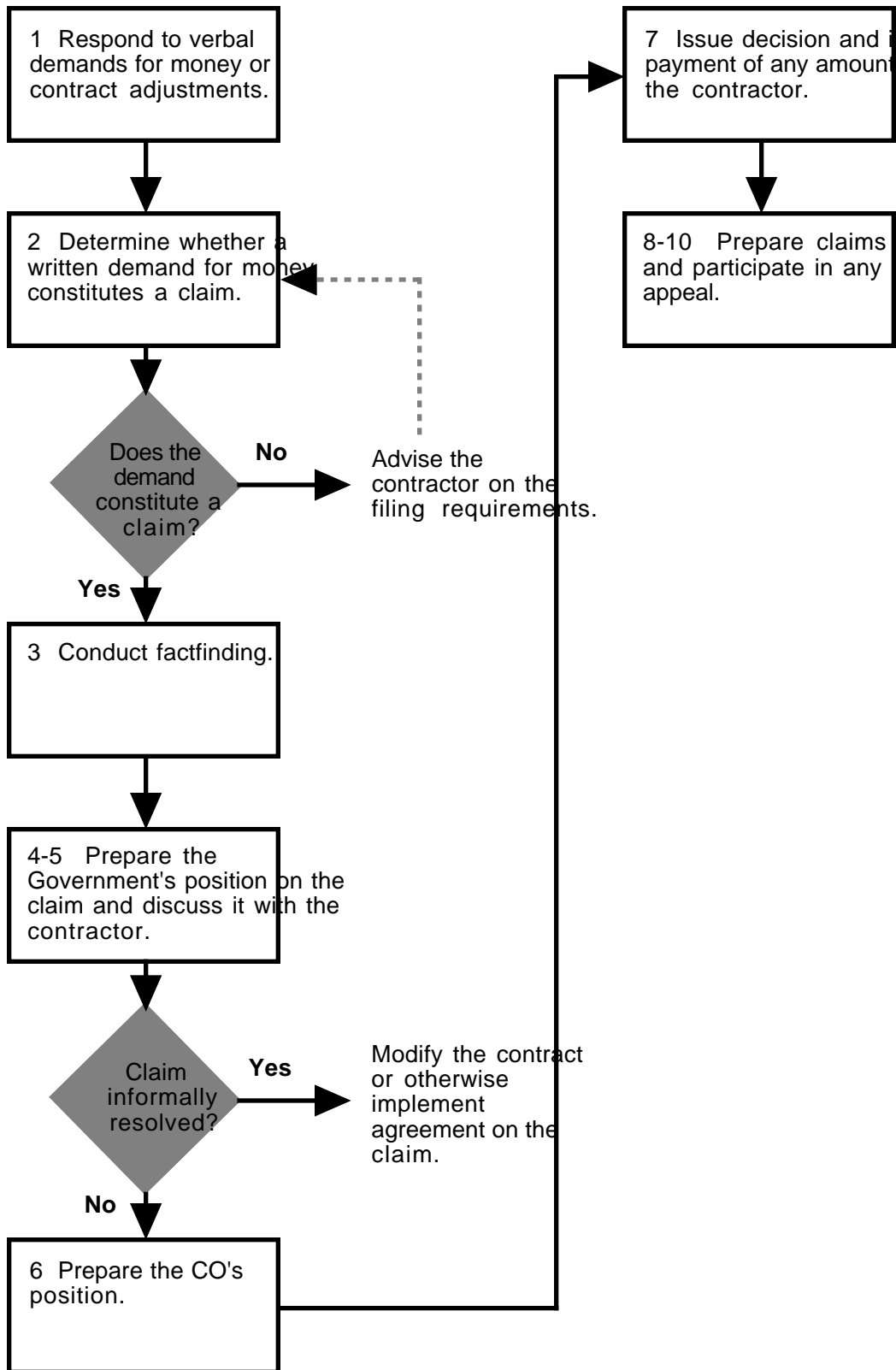
1. Commercial Law.
2. Contract Disputes Act of 1978.
3. Types of claims and typical grounds of claims.
4. Knowledge of GAO, GSA, and other Boards of Contract Appeals decisions.

Claims Under Part 12

 See FAR §52.212-4 (d) in contracts for commercial items for coverage of the Contract Disputes Act. [§12.212-4, FAC 90-32, Case 94-790]

Other Policies and References (Annotate As Necessary):

CLAIMS



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Tasks

Related Standards

<p>1. Respond to an oral demand from the contractor for additional money or contract adjustment.</p> <ul style="list-style-type: none"> • Ask questions to clarify the claim. • Explain the Government's version of the facts. • Where necessary, break for factfinding. • Advise the contractor of the procedure for submitting a written claim. 	<p>1. Provide accurate information and only that information which is directly relevant to the issues presented by the claim.</p>
<p>2. Determine whether a written demand for money constitutes a payable claim.</p> <ul style="list-style-type: none"> • Addressed to Contracting Officer. • Supporting documentation. • If over \$100,000, accompanied by the certification prescribed in FAR 33.207. 	<p>2. Return the demand for correction if the demand does not meet the requirements of FAR 33.206 and 33.207. Otherwise, document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer.</p> <p>Correctly determine whether the claim exceeds the dollar threshold for certification (i.e., in the aggregate).¹</p>

Certification Threshold

✋ The threshold for certifying a claim is now \$100,000. Contracting officer deadlines for issuing decisions on a claim reflect the new threshold of \$100,000 for certifying claims. Thresholds have also been increased to \$50,000 and \$100,000 respectively for the Board of Contract Appeals (BCA) small claim procedure and accelerated procedure. [§33.201, §33.207 and §33.211, FAC 90-32, Case 94-730, CSW Unit 78, Task 2]

<p>3. Conduct factfinding related to the contractor's demand and record the findings of fact.</p> <p>Is the claim:</p> <ul style="list-style-type: none"> • Timely (e.g., statute of limitations; within timeframes in contract)? • Not covered by an existing release of claims? • Not barred by another contract clause (e.g., the clause at 52.219-10, which states that "determinations made under this clause are not subject to the Disputes clause")? • Not covered by the procedures of a clause other than the Disputes clause (e.g., requests for relief under P.L. 85-804)? • Supported by sufficient data from the contractor, and such data are accurate and complete? • Factually correct? 	<p>3. Correctly determine whether the demand has standing, is factually correct, and is supported by sufficient data.</p>
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¹ FAC 90-20.

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Related Standards

Deadlines For Submitting Claims

☞ Claims must be submitted in writing within 6 years after accrual of the claim. This applies whether the contractor or the Government is the submitting party. “Accrual” means “the date when all events, which fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred.” [§33.201 and §33.206, FAC 90-32, Case 94-730, CSW Unit 78, Task 3]

If the claim is filed at the 7 year mark, the claim will not be payable even at agency discretion (save under FAR provisions for extraordinary relief). The parties can negotiate a shorter period than 6 years for filing claims after accrual. The 6-year period does NOT apply to :

- Contracts awarded prior to October 1, 1995.
- A Government claim based on a contractor claim involving fraud.

<p>4. Prepare the Government's position on the claim.</p> <ul style="list-style-type: none">• Establish position:<ul style="list-style-type: none">- Reject in whole.- Partially accept.- Accept in whole.• Determine the amount (if any) of adjustment (per Unit 40), interest due the contractor, and any other consideration.• Refer suspected fraudulent claims for investigation).	<p>4. Correctly determine whether the CO has jurisdiction to decide or resolve the claim (per FAR 33.210).²</p> <p>The Government's position should be based on facts submitted by contractor with the written claim (and not on any other information that may have been provided by the contractor in discussions or other forms). Correctly determine the validity of the claim and amount of adjustment. Develop questions to collect additional data (if any) from the contractor necessary to validate the claim.</p> <p>Refer claims for investigation of fraud under the conditions described at FAR 33.209.</p>
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☞ In contracts for commercial items which include the clause at 52.212-4 (unless an addendum to that clause says otherwise), the risk of loss or damage remains with the contractor until either:

- Delivery of the item(s) to a carrier, if transportation is f.o.b. origin; or
- Acceptance by the Government or delivery of the item(s) to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination. (94-790)

² FAC 90-20.

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<p>5. Attempt to resolve the demand through informal discussions (per Units 44 and 45) or a procedure for Alternate Dispute Resolution.</p> <p>Possibilities:</p> <ul style="list-style-type: none"> • Resolution short of contract modification. • Contract modification. 	<p>5. Per FAR 33.204, try to resolve all contractual issues by mutual agreement at the contracting officer's level, unless otherwise precluded from such a decision or settlement by FAR 33.210.</p> <p>Participate in an ADR only if both parties have agreed on all essential elements per FAR 33.214 (including certification of the claim, regardless of dollar amount, as provided in FAR 33.207).</p>
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Requests For ADR

☞ If the contracting officer rejects a small business contractor's request for ADR, the contracting officer must provide a written explanation to the contractor, citing "one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons..." Contractors have the same obligation if they reject the agency's request for ADR. [§33.214(b), FAC 90-32, Case 94-730, CSW Unit 78, Task 5]

What might be a reason for rejecting a request for ADR? Reasons at 5 U.S.C. 572(b) include:

- The need for an authoritative or definitive decision on a particular issue that has "precedential value", if the ADR proceeding is not likely to produce a result that is generally accepted as an authoritative precedent.
- When "maintaining established policies is of special importance", the need to minimize variations among individual decisions — if ADR proceedings are not likely to provide consistent results.
- The matter significantly affects persons or organizations who are not parties to the ADR proceeding.

Expert Services

☞ There is a new exception for acquiring the services of experts for a current or "reasonably foreseeable" litigation or dispute. Among other things, this exception allows the Government to essentially name request a neutral mediator or arbitrator for ADR who is agreeable to both parties. See "*Competition Requirements*" for more details on this exception. [§6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services, FAC 90-31, Case 94-701, CSW Unit 78, Task 5]

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<p>6. Prepare the Contracting Officer's decision and obtain legal review.</p> <ul style="list-style-type: none"> • Description of the claim or dispute. • Reference to the pertinent contract terms. • Statement of the factual areas of agreement or disagreement. • Statement of Contracting Officer's decision with supporting rationale. • Contractor appeal rights. • Demand for payment (per Unit 68) if the decision results in a finding that the contractor is indebted to the Government. 	<p>6. Prepare the decision only if agreement cannot be reached short of such a decision. Make the decision within required timeframes stated in FAR 33.211. The decision should be complete. The facts and logic should be sufficient, standing alone, to support the Government's position and refute any contrary position in the contractor's written claim. The statement of the contractor's appeal rights substantially should conform to the language in FAR 33.211.</p>
<p>7. Issue the decision and initiate payment of any amount due the contractor under the decision.</p>	<p>7. Initiate payment regardless of whether the contractor appeals the decision. Correctly determine the amount of interest (if any) due the contractor.³</p>

👉 Contracting officer deadlines for issuing decisions on a claim reflect the new threshold of \$100,000 for certifying claims. (94-730)

<p>8. If the contractor appeals to the agency's Board, prepare a claims file as requested by the Board.</p>	
<p>9. If contractor appeals to the court, prepare claims files as requested by the appeals court.</p>	
<p>10. Participate in appeal proceedings as requested by the agency's counsel, Board, or Court.</p>	

Small Claims Procedures Threshold

Thresholds have also been increased to \$50,000 and \$100,000 respectively for the Board of Contract Appeals (BCA) small claim procedure and accelerated procedure. [§33.201, §33.207 and §33.211, FAC 90-32, Case 94-730]

³ FAC 90-20.